

1 BEFORE THE POLLUTION CONTROL HEARINGS BOARD
2 STATE OF WASHINGTON

3 W.R. & JANE BIALKOWSKY,)

4 Appellants,)

5 v.)

6 SPOKANE COUNTY AIR POLLUTION)
 CONTROL AUTHORITY,)

7 Respondent.)

PCHB No. 89-59

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

9 This matter, the appeal of a civil penalty of \$75 for the alleged
10 violation of open burning regulations came on for hearing on July 26,
11 1989, in Spokane, Washington, before Wick Dufford, presiding for the
12 Board. Member Harold S. Zimmerman has reviewed the record.

13 Appellants appeared pro se by Jane Bialkowsky. Spokane County
14 Air Pollution Control Authority was represented by Steven C. Miller,
15 Attorney at Law. The proceeding was reported by Virginia M.
16 Recanzone, Court Reporter.

1 Witnesses were sworn and testified. Exhibits were admitted and
2 examined. From the testimony and exhibits examined, the Board makes
3 the following

4 FINDINGS OF FACT

5 I

6 The Bialkowskys; maintain their family home on Veracrest Drive in
7 Veradale, Spokane County, Washington. Their backyard gives way to a
8 wooded area where large trees grow -- pines, maple, aspen, mountain
9 ash.

10 For years the Bialkowskys have thrown grass clippings and lawn
11 thatch into the wooded area. In their backyard they carry out small
12 burns of gardening refuse from time to time during SCAPCA's burning
13 season.

14 II

15 On Monday, April 10, 1989, a little after three in the afternoon,
16 a SCAPCA inspector passing through the Veradale area, spotted a smoke
17 plume at a distance. Tracking it to its source, Bialkowsky's
18 property, the inspector went into the backyard to investigate. She
19 found that an unattended area burn was in progress, engulfing lawn
20 residues and undergrowth and spreading down into the wooded area. It
21 was windy. The flames were beginning to climb up the trees.

22 No one was at the house. The inspector left and contacted the
23 fire department, which responded immediately. At around 4:00 p.m.
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26 FINAL FINDINGS OF FACT,
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(2)

1 Mrs. Bialkowsky arrived home to find a fire engine there putting out
2 the fire, and a field notice of violation left by the SCAPCA inspector.

3 Before being controlled the fire had spread 40 to 50 feet into
4 the trees.

5 III

6 The cause of the fire is unknown. It was not intentionally set
7 by the Bialkowskys. It might have been lighted by trespassers. It
8 might have been the result of spontaneous combustion. (A large amount
9 of lawn thatch was on hand.) It might have been ignited from a spark
10 left over from backyard burning done by the Bialkowskys the previous
11 Saturday.

12 IV

13 On April 24, 1989, SCAPCA issued Notice of Violation #4269 to the
14 Bialkowskys, asserting a violation of Article VI, Section 6.01 of
15 SCAPCA's Regulation I on April 10, 1989. A civil penalty of \$75 was
16 assessed. On May 3, 1989, the Bialkowskys appealed.

17 We take official notice of the provisions of SCAPCA Regulation I.

18 VI

19 The Bialkowskys have no prior record of non-compliance with
20 SCAPCA requirements. We find it highly unlikely that the events at
21 issue will be repeated.

VII

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such.

From these Findings of Fact the Board reaches the following

CONCLUSIONS OF LAW

I

The Board has jurisdiction over the parties and the subject matter. Chapters 43.21B and 70.94 RCW.

II

Under the Washington Clean Air Act, local air pollution control authorities have the power to adopt regulations. RCW 70.94.141. When any such regulation is violated, a civil penalty may be assessed. RCW 70.94.431. The assessment of penalties is done on a strict liability basis. The intention of a violator is not relevant to whether a violation occurred. Puget Chemco v. PSAPCA. PCHB No. 84-245(1985).

III

Article, VI, Section 6.01 of SCAPCA's Regulation limits residential burning to authorized burn days. Fires must be attended. They can be no larger than four feet in diameter. It is unlawful to permit an open fire in violation of these limitations.

When burnable material has been assembled by a landowner and spontaneous combustion or persons unknown start an unlawful fire, the landowners may be held to have permitted the fire by having created

1 the risk of its occurrence. Cummings v. DOE, PCHB No. 85-89 (1985).

2 We conclude that the Bialkowskys violated Article VI, Section
3 6.01.

4 IV

5 Though not relevant to the question of violation, intention is
6 considered in determining whether the amount of penalty is
7 appropriate. The primary object of civil penalties is to change the
8 behavior of violators.

9 Here there is no pattern of prior violations. The risks created
10 are fully appreciated by appellants. Recurrence of violations of any
11 kind is not anticipated. Under all the facts and circumstances we
12 conclude that the objects of the law will be properly served by the
13 Order set forth below.

14 V

15 Any Finding of Fact which is deemed a Conclusion of Law is hereby
16 adopted as such.

17 From these Conclusions of Law the Board makes the following
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26 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

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(5)

ORDER

The violation asserted in SCAPCA Notice of Violation #4269 is affirmed. The civil penalty is affirmed, but \$55 of said penalty is suspended on condition that appellant not violate SCAPCA's regulations for one year from the date of this Order.

Twenty dollars (\$20) is due and owing.

DONE this 12th day of October, 1989.

POLLUTION CONTROL HEARINGS BOARD

(Wick Duford)
WICK DUFRORD, Presiding

Harold S. Zimmerman
HAROLD S. ZIMMERMAN, Member

FINAL FINDINGS OF FACT,
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